

APPEAL PANEL OF RACING NEW SOUTH WALES

APPEAL OF LICENSED JOCKEY MR TIMOTHY CLARK

Appeal Panel: **Mr R. Beasley SC (Principal Member); Mr C Tuck; Mrs J Foley**

Appearances: **Racing NSW: Mr S Railton, Chairman of Stewards**
Appellant: Mr W. Pasterfield, Solicitor

Date of Hearing and Orders: 17 April 2023

Date of Reasons: 18 April 2023

Rules involved: AR 131(a) – Careless Riding

REASONS FOR DECISION ON PENALTY

Mr R Beasley SC, for the Panel

Introduction

1. On 8 April 2023, licensed jockey Mr Timothy Clark (**the Appellant**) pleaded guilty to a breach of the careless riding rule (AR131(a)) of the Australian Rules of Racing, following his ride on *Hope in Your Heart* in the Group 1 Queen of the Turf Stakes run at Randwick Racecourse that day.
2. The particulars of the charge were as follows:

“...near the 250m ...you did allow your mount to shift in at that stage of the race when insufficiently clear of Levante, which, at that stage, was improving into a run between your mount and Roots and, as a consequence, Levante lost its rightful running and was checked.”
3. The Stewards imposed a four meeting suspension, using the Careless Riding Penalty Template (**the Template**). The carelessness was graded as “low”, with the consequence being “checked/lost rightful run”. This resulted in a base penalty of a five-meeting suspension. A 20% mitigation factor was applied for the appellant’s good record (2 suspensions in the last 12 months), and 10% for guilty plea. A premium of 10% was

applied given that the offending against the rule occurred in a Group 1 Feature Race. These factors reduced the penalty from five to four meetings.

4. The Appellant has appealed against the severity of penalty imposed. He was represented by Mr W Pasterfield, Solicitor. Racing NSW was represented by the Chairman of Stewards, Mr S Railton. Film of the race was tendered, as was the transcript of the Stewards' Inquiry, and the Appellant's full riding record.

Submissions

Appellant

5. The submissions made by Mr Pasterfield on the Appellant's behalf, who contended for a reprimand rather than any form of suspension, can be summarised as follows:
 - (a) The conduct of the Appellant did not cause *Levante* to lose its rightful running. Rather, that horse was only hampered or crowded, and as such the Appellant should be reprimanded and not suspended. He pointed to the evidence of Damian Lane who rode *Levante* who said at the inquiry said he did not believe he had established a run between the Appellant's mount and *Roots*: T1 L34.
 - (b) The ride of Nash Rawiller on *Atishu* contributed to the Appellant's conduct. Mr Rawiller's shift on *Atishu* at about the 350m forced the Appellant to look for a run to the inside, and was the catalyst for the incident between his mount and *Levante* at the 250m.
 - (c) The Appellant's good record warrants further leniency. He has only had two suspensions for careless riding in over 2 years. Reference was made to the Panel's recent decision in *The Appeal of James McDonald* (RAP, 13 March 2023) as an example of where, in an exercise of discretion by the Panel based on Mr McDonald's very good safety record, his suspension was reduced by one meeting less than a strict application of the Template.
 - (d) It was submitted a further mitigation factor should have been applied given the suspension imposed would mean that the Appellant would miss the Hawkesbury race meeting this Saturday, which includes two Group 3 races of \$200,000.

Racing NSW

6. Mr Railton submitted that the film clearly shows *Levante* lost its rightful running as a result of the Appellant's shift in. He also drew the Panel's attention to Mr Lane's concession that his run disappeared as a result of this: T2 L93. As to any contribution from *Atishu*, Mr Railton observed that this took place 100m before the incident here, and was sufficiently unconnected to not be considered a contributing factor.

7. As to the Appellant's record, Mr Railton stated that the Appellant is considered to be a safety conscious rider, as reflected by his record. However, the 20% discount applied was appropriate, and in accordance with the Template. He finally submitted that it would be incongruous to apply a further discount for the Appellant missing the Hawkesbury meeting if that discount meant he could in fact ride at that meeting.

Resolution

8. On the matters raised by Mr Pasterfield at [5] above, the Panel makes these findings:
 - (a) Film of the race shows *Levante* lost its rightful running. It was not merely hampered or crowded.
 - (b) Mr Rawiller's shift on *Atishu* did have some impact on the Appellant's ride on his mount, but that in no way changed the standard of care the Appellant owed to *Levante* and its rider not to shift in when insufficiently clear.
 - (c) The Appellant was suspended for careless riding on 28 January 2023, and 6 October 2022. His suspension before that was in June 2020. In between June 2020 and October 2022, he was reprimanded six times for careless riding. This is a good record, but not the kind of exceptional record Mr McDonald had at the time of his appeal. A 20% discount under the Template was appropriate.
 - (d) As to the Hawkesbury meeting being a feature meeting, there does seem something incongruous if a rider can seek a mitigation factor for missing a feature meeting if the application of such a factor results in them not missing that feature meeting. Perhaps in prior appeals this has not always been properly thought through. If that has involved error, it would be the responsibility of the Principal Member. That said, there is another issue here. Not every Feature Race meeting should attract a mitigation factor under the Template, and the Template

provided no definition. Common sense must be applied. No offence is intended by observing that the Hawkesbury meeting this Saturday is not the kind of Feature race meeting that is comparable to, say, the Golden Slipper, The Everest, or the Championships (and no doubt other significant race days, particularly in Spring and Autumn in NSW). We would not apply a mitigation factor for the Hawkesbury meeting in any event.

9. For the above reasons, the Panel considers the Stewards assessed the circumstances here appropriately and in accordance with the Template, and the appeal should be dismissed.

10. At the conclusion of the Appeal an issue arose briefly as to whether the Appellant had an automatic right of a 7-day deferral of penalty under LR 107(2)(e). Mr Railton contended that he did not, as the words “any riding engagement” in that rule should be interpreted to be a reference to circumstances where a horse has officially accepted to run in a race with the rider declared as the rider. It should not be taken to apply to arrangements entered into prior to acceptances. Mr Pasterfield has a different view, but ultimately the point was not pressed. The Panel’s provisional view is that Mr Railton is probably correct, but we do not decide this now, primarily because we do not have to. We also consider there might be evidence that might need to be tendered as to why the rule was amended, which could throw further light onto how it should be interpreted.

11. The Panel makes the following orders:
 1. Appeal dismissed.
 2. Finding of breach of AR131(a) confirmed.
 3. Penalty of a 4-meeting suspension of the Appellant’s licence to ride confirmed.
The commencement of that penalty is deferred to midnight on 19 April 2023, and expires on 26 April 2023, on which day the Appellant may resume riding.
 4. Appeal deposit forfeited.